

### **REMARKS**

The Office Action of August 27, 2004 has been carefully considered. Claims 1, 5, 6, 10-12, 17, 18, and 22-34 are currently pending. Claims 2-4, 7-9, 13-16, and 19-21 were cancelled. Claims 1, 5, 6, and 22 are currently amended to more clearly recite the invention. Claims 29-34 are new. No new matter has been added by this amendment.

Claims 1 and 22 have been amended to more distinctly point out that “the at least one injury effector has a first exposed length and the at least one therapeutic-substance delivery effector has a second exposed length, and wherein the first exposed length is greater than the second exposed length.” Support for these amendments is found, *inter alia*, on page 10, lines 3-15, and FIGS. 2-3, and 10B of the specification as-filed.

Claims 5 and 6 have been amended to correct errors of a grammatical nature.

Claims 29-34 are new and draw support, *inter alia*, from page 9, line 9 to page 10, line 15, and FIGS. 1-3, and 6A-8 of the specification as-filed.

### **Rejections under §112**

Claims 5 and 6 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to provide an antecedent basis for “the control source.” As claims 5 and 6 have been amended to correct these grammatical errors, Applicant requests that these rejections be withdrawn.

### **Rejections under §102(e)**

Claims 1, 5, 6, 10-12, 17, 18, and 22-28 were rejected under 35 U.S.C. §102(e) as being anticipated by United States Patent No. 6,241,701 to Hofmann (“Hofmann”). These rejections should be withdrawn.

Hofmann discloses a device used to treat tumors through electroporation therapy. Varying electroporation techniques and patterns are discussed. In one embodiment, therapeutic application of electroporation may be achieved by use of an array of electrodes having a needle configuration for insertion into tissue. Unlike the device of the present invention, there is no disclosure in Hofmann of an electrode that can cause injury and lacks therapeutic-substance delivery capabilities. Instead, the electrodes in Hofmann appear as an array of uniform structures having uniform lengths. Hofmann does not teach, suggest, or disclose electrodes in a single array in which the electrodes vary in characteristics such as length, function, and/or capabilities.

Accordingly, there is no discussion or contemplation that the device in Hofmann have an injury effector having a greater exposed length than a therapeutic-substance delivery effector. Thus, the rejections based on Hofmann should be withdrawn.

Moreover, it is further noted that Hofmann does not disclose, teach, or suggest at least one injury effector not being in substance communication with a therapeutic-substance delivery source, nor does Hofmann disclose, teach, suggest a plurality of therapeutic-substance delivery effectors disposed radially around at least one injury effector. Therefore, claims 29-34, which recite that at least one injury effector is not in substance communication with a therapeutic-substance delivery source, or that a plurality of therapeutic-substance delivery effectors are disposed radially around at least one injury effector, are patentably distinguishable from Hofmann as well.

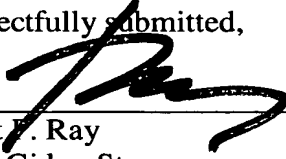
### CONCLUSION

In view of the above amendments and remarks, it is believed that claims 1, 5-6, 10-12, 17-18, and 22-34 are in condition for allowance. Should the Examiner not agree with Applicant's position, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the application.

No fee is believed due for this response. Should any fees be required, please charge such fees to Jones Day deposit account no. 503013.

Respectfully submitted,

Date: November 15, 2004

  
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